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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,527	11/13/2000	David J. Stucky	196261US55DIV	4882

22850 7590 12/18/2002

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EXAMINER

KUHNS, ALLAN R

ART UNIT	PAPER NUMBER
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1732

14

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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Below is a communication from the EXAMINER in charge of this application  
COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- a) ☐ is extended to run \_\_\_\_\_ or continues to run \_\_\_\_\_ from the date of the final rejection
- b) ☒ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due in accordance with 37 CFR 1.192(a).
- ☒ Applicant's response to the final rejection, filed NOV. 21, 2002 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☐ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:
- ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
  - ☐ They raise new issues that would require further consideration and/or search. (See Note).
  - ☐ They raise the issue of new matter. (See Note).
  - ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE:

2. ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.
3. ☒ Upon the filing of an appeal, the proposed amendment ☒ will be entered ☐ will not be entered and the status of the claims will be as follows:

Claims allowed: NONE

Claims objected to: NONE

Claims rejected: 15-17, 21 AND 23

However;

- ☐ Applicant's response has overcome the following rejection(s): \_\_\_\_\_

4. ☐ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because \_\_\_\_\_
5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

- ☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☒ Other SEE ATTACHMENT

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#### ATTACHMENT TO ADVISORY ACTION

1. Applicants' request for review of the references cited in the IDS filed November 13, 2000 is noted by the examiner. It is further noted by the examiner that certain documents listed on this IDS are duplicates. For example, 5,847,016 (Cope) appears both on page 1 and page 17 of the IDS and 3,879,505 (Boutillier et al.) appears both on page 1 and page 16. In addition, 5,406,768 (Giuseppe et al.) appears both on page 14 of the IDS filed November 13, 2000 and on page 2 of the IDS filed May 7, 2002. The examiner is hereby requesting that the IDS filed November 13, 2000 be reviewed by Applicants and that any duplicate listings be deleted to facilitate the review by the examiner.
2. The declaration under 37 CFR 1.132 filed November 27, 2002 is insufficient to overcome the rejection of claims 15-17, 21 and 23-25 based upon Cope (5,847,016) or Cope in view of Ansted as set forth in the last Office action because: it is not commensurate in scope with the claims. For example, the claims at issue are sufficiently broad to encompass the capability of countersinking any screw while the experiments cited in the declaration were conducted with only "stock square head 3-inch deck screws". In addition, the results of the experiments are presented in terms of "screw failure", which may include bending, breaking or stripping out of the material in addition to or in conjunction with an inability to be countersunk without predrilling.
3. Furthermore, the prior art relied upon (Ansted) suggests to one of ordinary skill in the art the capability of countersinking screws into foam material without predrilling by noting that the

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screws are "self drilling". One of ordinary skill in the art would not doubt the capability of the screws to be countersunk because Ansted teaches at column 4, lines 31-33 that the screws must be short enough so as to not reach a skin located on the opposite side of the foam. Applicants argue that the foam of Ansted is a polyurethane foam (rather than PVC) which does not contain fiber or blowing agent. This is not persuasive because both the foams of Cope and Ansted contain gas-filled cells which are susceptible to being penetrated by a screw by self drilling, as noted by Ansted.

4. Because the limitations of claim 24 have been inserted into the independent claim, the basis for the rejection of all claims will now be Cope in view of Ansted.

*Allan R. Kuhns*

ALLAN R. KUHNS  
PRIMARY EXAMINER AU 1732

12-18-02